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SIPDIS

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TAGS: PREL PGOV PINR MARR JA

SUBJECT: FIFTH BISTF PLENARY WELCOMES METI AS NEW  
PARTICIPANT, DISCUSSES PROGRESS TO DATE AND  
INSTITUTIONALIZING BISTF PROCESS

REF: A. 07 TOKYO 3690  
1B. 07 TOKYO 4801  
1C. TOKYO 256

Classified By: Ambassador J. Thomas Schieffer, Reasons: 1.4 (b/d)

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SUMMARY  
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11. (C) The DAS-level Bilateral Information Security Task Force (BISTF) broke new ground by bringing in the Ministry of Economy, Trade, and Industry (METI) as a full member to the process during the October 7 plenary meeting in Tokyo. Japan-based working groups reported on their discussions and progress to date on implementing mid- and long-term milestones from the annex to the BISTF Terms of Reference (TOR). The Embassy Legal Attaché briefed on the August 5 discussions between Department of Justice (DOJ) and FBI representatives and their counterparts from the Ministry of Justice (MOJ) and the National Police Agency (NPA) on their respective law enforcement and judicial procedures for cases involving classified information. National Disclosure Policy Committee (NDPC) representatives explained the purpose and composition of the NDPC and details of information security assessments. METI gave a presentation on Japanese efforts to implement information security procedures applicable to industry and the need for legislation allowing effective enforcement. Both sides discussed the need to institutionalize the BISTF process in anticipation of changes in both governments and agreed to convene the next plenary mid-April in Washington. End Summary.

12. (C) On October 7, U.S. and Japanese officials convened the fifth plenary meeting of the Bilateral Information Security Task Force (BISTF). DASD for East Asia David Sedney, State EAP/J Director Danny Russel, and Assistant Deputy Director of National Intelligence (ADDNI) for Foreign Relations Amy Reed co-chaired the U.S. side. MOFA North American Affairs Bureau Deputy Director General Koji Haneda, Ministry of Defense (MOD) Defense Policy Bureau Deputy Director General Ryutaro Matsumoto, and Cabinet Intelligence and Research Office (CIRO) Counselor Harunobu Tsukihashi were the Japanese co-chairs. Director-level and Deputy Director-level officials from the Cabinet Secretariat, the National Police Agency (NPA), the Public Security Intelligence Agency (PSIA), the Ministry of Economy, Trade, and Industry (METI), and the Ministry of Justice (MOJ) also

participated.

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METI OFFICIALLY WELCOMED/WORKING GROUP STATUS REPORTS  
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¶3. (C) The plenary opened with an official welcome for METI as a full participant to the BISTF process, heralding an important first step toward broadening Japanese government participation beyond the six ministries and agencies represented in past meetings (ref C). Representatives of the three working groups (WG 1: Physical Security; WG 2: Cyber Security; WG 3: Personnel Security) under the Tokyo-based BISTF Implementation Group presented their respective status reports, including details on the completion of all of the near-term milestones and two of the mid-term milestones -- including the AEGIS security plan. The Implementation Group co-chairs also presented a report on the working group structure, detailing the new process in which each of the three working groups is responsible for managing and monitoring implementation of the remaining mid- and long-term milestones. Under the new working group format, the working groups will discuss the means to implement the remaining milestones, identify and assign subject matter experts from both countries to conduct implementation, and monitor the progress of the subject matter experts and report to the Implementation Group.

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AUG 5 DOJ-MOJ MEETING TOUCHED ON LEGAL/JUDICIAL PROCEDURES  
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¶4. (C) Embassy Legal Attache briefed on the August 5 law enforcement experts meeting in Tokyo. Representatives from the U.S. Department of Justice (DOJ) and FBI had discussed with their counterparts from the Japanese Ministry of Justice (MOJ) and the National Police Agency (NPA) the two countries' respective policies and procedures on handling classified information in law enforcement and judicial proceedings. The U.S. side illustrated with the espionage case of Brian Patrick Regan how the Classified Information Procedures Act was used to protect classified information at trial. The NPA and MOJ gave presentations on investigative procedures in criminal cases involving classified information and how such information is presented in court. The participants in the August 5 meeting concluded that:

- Japan employs strict custody controls over all seized evidence, but with particularly stringent procedures in cases involving classified information;
- Japan possibly has sufficient procedures in place to protect classified information in court proceedings (the U.S. side wants further discussions on this issue); and,
- while the Japanese government derives legal authority to protect classified information from the Self Defense Forces Law, Defense Secrets Act, and National Public Service Law, it does not yet have any espionage laws.

¶5. (C) Embassy Legal Attache indicated that long-term milestones 13, 14, and 15 concerning procedures for protecting classified in criminal cases and judicial proceedings were not discussed during the August 5 meeting. MOFA DDG Haneda suggested that, based on the August 5 discussions, these long-term milestones be removed from the BISTF TOR. DASD Sedney responded that the milestones should remain bracketed pending further discussion among the subject matter experts and suggested that they present a recommendation to the BISTF on how best to address the milestones.

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NDPC SECURITY ASSESSMENT/RECIPROCAL VISIT BY JAPAN  
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¶6. (C) NDPC Executive Director Peter Batten presented the

organizational structure of the NDPC, as well as the legal and executive authorities by which the President authorizes the sharing of classified information with foreign governments. He also gave an overview of several bilateral information sharing agreements, including the broad General Security of Information Agreement (GSOIA) and the Industrial Security Agreement. He explained that the sharing process requires a thorough security assessment of the subject country, which is conducted by an inter-agency NDPC team that examines information security procedures within every government, military, and defense industry organization that handles U.S. classified information. The assessments include a review of the country's laws and regulations, threat identification, physical security procedures, and other elements. Batten added that the assessment visits are reciprocal and invited the Japanese government to conduct an assessment of U.S. agencies with which it shares sensitive information in early 2009. He also provided the Japanese participants a strawman agenda for a proposed reciprocal visit sometime in early 2009.

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METI SEEKS CLEARANCES, INDUSTRIAL ESPIONAGE LAWS  
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¶6. (C) METI Director for Aerospace and Defense Industry Naoshi Hirose provided an in-depth look at METI's current efforts to implement an industrial security program, as well as the ministry's views on existing legislation and its limits. Underscoring the increasing need for direct cooperation between Japanese industry and DOD or U.S. defense contractors, Hirose stated that METI is in the process of formulating measures to protect classified military information (CMI) passed from METI to private companies under the current U.S.-Japan General Security of Military

Information Agreement (GSOMIA). These measures include procedures for restricting access to CMI, special handling of CMI, and granting security clearances to private company employees with access to CMI.

¶7. (C) Hirose also stressed that current Japanese laws do not provide sufficient protection for classified information, and that METI had proposed in its June 4 report on international competitiveness to the ruling Liberal Democratic Party (LDP) that existing laws be amended to allow "criminal sanctions at the point of illegal appropriation for the purpose of making a gain for himself or another, or exposing another to a risk, or benefiting any foreign government or agent." METI is also pursuing the passage of an industrial espionage law in the current or the following Diet session, Hirose said.

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INSTITUTIONALIZING BISTF  
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¶8. (C) DASD Sedney urged both sides to explore ways to institutionalize the BISTF process in light of expected changes in both governments. He suggested that both sides -- as a step toward institutionalizing BISTF -- present a report from the BISTF co-chairs to the members of the Security Consultative Committee (SCC) before the end of the calendar year. Considering that BISTF is a product of the May 2007 SCC meeting and that a mid-term milestone mandates a progress report to the SCC, a status report to the SCC is a logical way to help the process weather political changes in both governments. The U.S. side also invited their Japanese counterparts to come to Washington sometime in mid-April for the next plenary session. ADDNI Reed highlighted the need for the new Japanese participants to receive the same informational and best practices briefings that had been given to the original BISTF members and invited them to attend these at the earliest opportunity in Washington. MOFA DDG Haneda noted that the Japanese side will consider the suggestion for a report to the SCC, but pointed out that, given recent expansions in Japanese participation, a report

from the BISTF to the SCC might not be the appropriate format.

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RIGHT TO KNOW VS PROTECTING CLASSIFIED INFORMATION  
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¶19. (C) DASD Sedney also commented on recent articles in the Japanese press dealing with the public's right to know. He contrasted this right with the government's obligation to protect the public, which requires protecting sensitive information to prevent it from passing into the hands of adversaries, terrorists, or criminals. Balancing the right to know with the need to protect the public has always been a difficult act, but also a necessary one for democratic governments, Sedney asserted. MOFA DDG Haneda suggested the issue be discussed in a future BISTF-related forum.

¶10. (U) The U.S. co-chairs have cleared this message.  
SCHIEFFER